

LAW OFFICE OF CHAD J. LAVEGLIA PLLC



December 1, 2023

Re: Famiglietti v. NYC Department of Sanitation et al.,
Docket No.: 23-cv-02754 (LDH) (VMS)

Via ECF

Honorable LaShann DeArcy Hall
United States District Court
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 11201

Dear Judge Hall:

This office represents Plaintiff Rocco Famiglietti. Plaintiff commenced this action on April 12, 2023. Generally, Mr. Famiglietti alleges that the defendants terminated his employment—for not complying with its vaccine mandate—in violation of the Fourteenth Amendment’s Equal Protection Clause and Title VII. Specifically, Plaintiff avers a Section 1983 selective enforcement claim under the Fourteenth Amendment, failure to accommodate in violation of Title VII, and religious discrimination in violation of Title VII. Defendants’ have moved to dismiss the complaint in its entirety pursuant to Fed. R. Civ. P. §12(b)(6). The motion is fully briefed and pending decision.

This letter is to inform Your Honor of a recent decision rendered by this Court in a similar challenge brought by a former Assistant Commissioner of the New York City Department of Corrections Training and Development Division. In *Daniel Chavez v. City of New York et al.*, No. 23-cv-07754 (BMC) the plaintiff claimed that the same defendants terminated his employment—for not complying with its vaccine mandate—in violation of the Fourteenth Amendment’s Equal Protection Clause (Section 1983 Selective Enforcement) and Title VII (Failure to Accommodate). ¹ The defendants moved to dismiss pursuant to Fed R. Civ. P §12(b)(6). On November 29, 2023, this Court denied the defendants’ motion to dismiss the plaintiff’s Section 1983 selective enforcement claim and failure to accommodate claim (*see* Exhibit 1- Docket Order).

¹ The Plaintiff in Chavez also brought a claim under the Fourteenth Amendment’s Substantive Due Process Clause. That claim was dismissed.

Because Mr. Famiglietti's Section 1983 selective enforcement claim, and failure to accommodate claim here, are nearly identical to the surviving claims in *Chavez id.*, the Court should also deny the defendants' motion to dismiss those claims in this case.²

Respectfully Submitted ,



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² One material distinction is that there was no issue regarding whether the plaintiff in *Chavez* timely filed his charge with the EEOC. Here, in contrast, the defendants claim that Mr. Famiglietti did not timely file a charge with the EEOC.

EXHIBIT 1

Date Filed	#	Docket Text
10/17/2023	1	COMPLAINT against All Defendants filing fee \$ 402, receipt number ANYEDC-17193080 Was the Disclosure Statement on Civil Cover Sheet completed -Yes,, filed by Daniel Chavez. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit 1- EEOC Right to sue letter, # 3 Exhibit 2- NYC denial of religious accommodation, # 4 Exhibit 3- NYC RA Appeals Panel Denial Letter, # 5 Proposed Summons City of New York, # 6 Proposed Summons Eric Adams, # 7 David Chokshi) (LaVeglia, Chad) (Entered: 10/17/2023)
10/17/2023		Case Assigned to Judge Brian M. Cogan. Please download and review the Individual Practices of the assigned Judges, located on our website . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. (CV) (Entered: 10/18/2023)
10/17/2023	2	Clerk's Notice Re: Consent. A United States Magistrate Judge has been assigned to this case and is available to conduct all proceedings. In accordance with Rule 73 of the Federal Rules of Civil Procedure, Local Rule 73.1, the parties are notified that if all parties consent, the assigned Magistrate Judge is available to conduct all proceedings in this action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to this Notice is a blank copy of the consent form that should be filled out, signed and filed electronically only if all parties wish to consent. Any party may withhold its consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent. The form may also be accessed at the following link: https://img.nyed.uscourts.gov/files/forms/MJConsentForm.pdf (CV) (Entered: 10/18/2023)
10/18/2023	3	This attorney case opening filing has been checked for quality control. See the attachment for corrections that were made, if any. (CV) (Entered: 10/18/2023)
10/18/2023	4	Summons Issued as to All Defendants. (Attachments: # 1 Adam, # 2 David) (CV) (Entered: 10/18/2023)
10/18/2023	5	SCHEDULING ORDER: A telephonic Initial Status Conference is set for 11/29/2023 at 10:00 am. The parties are directed to call 571-353-2301 and enter Meeting ID 642046966#. See attached mandatory requirements for the conference. Ordered by Judge Brian M. Cogan on 10/18/2023. (PW) (Entered: 10/18/2023)
11/09/2023	6	NOTICE of Appearance by Traci Krasne on behalf of Eric Adams, David Chokshi, City of New York (aty to be noticed) (Krasne, Traci) (Entered: 11/09/2023)
11/09/2023	7	MOTION for pre motion conference by Eric Adams, David Chokshi, City of New York. (Krasne, Traci) (Entered: 11/09/2023)
11/09/2023		ORDER deferring ruling on 7 . The premotion conference is waived. This motion is deemed to constitute defendants' motion to dismiss. Plaintiff's opposition due 11/23/23. The Court shall hold oral argument on this motion at the Initial Status Conference as previously scheduled for 11/29/23, except that the conference and argument shall be held by video. A ZoomGov link will be emailed to counsel of record. Ordered by Judge Brian M. Cogan on 11/9/2023. (PW) (Entered: 11/09/2023)
11/23/2023	8	MEMORANDUM in Opposition to <i>Defendants' Motion to Dismiss</i> filed by Daniel Chavez. (LaVeglia, Chad) (Entered: 11/23/2023)
11/28/2023	9	REPLY in Support re 7 MOTION for pre motion conference <i>reply memorandum of law in further support of motion to dismiss</i> filed by Eric Adams, David Chokshi, City of New York. (Krasne, Traci) (Entered: 11/28/2023)
11/29/2023		Minute Entry and Order for Initial Status Conference and oral argument on 7 defendants' motion to dismiss held before Judge Brian M. Cogan on 11/29/2023. Counsel for all parties appeared via Zoom. Defendants' motion to dismiss is denied as to plaintiff's Section 1983 selective enforcement and Title VII failure to accommodate claims, and granted as to plaintiff's Section 1983 substantive due process claim. The Court set the following discovery schedule: parties to exchange Rule 26(a)(1) disclosures by 12/22/2023; serve written discovery requests by 1/8/2024; produce written discovery by 2/7/2024; complete fact depositions by 4/8/2024, the date fact discovery ends. The last day for filing a letter requesting a pre-motion conference to file dispositive motions shall be 4/15/2024. See transcript for details (Court Reporter: Kristi Cruz). (PW) (Entered: 11/29/2023)

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